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NAVARRO WATERSHED PROTECTION ASSOCIATION

P. O. Box 1936 * Mendocino, CA. 95460

November 12, 2000

STATE WATER RESOURCES
CONTROL BOARD
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DIV. OF WATER RIGHTS
SACRAMENTO

Mr. Harry Schueller
State Water Resources Control Board
Division of Water Rights
P. O. Box 2000
Sacramento, CA. 95812

Dear Mr. Schueller:

We wish to register a complaint that neither Navarro Watershed Protection Assn. (NWP) nor I personally were notified of the workshop concerning water right process and procedures to be held on Monday, November 27, 2000 in Sacramento.

This in spite of the fact that I personally have been making comments and protests since 1991 on Navarro watershed issues to State Water Resources Control Board and Division of Water Rights, and the NWP has been making such comments and protests since 1999. Moreover we have written to both you (May 30, 2000) and to our legislators regarding problems with the water rights process. Moreover, NWP has formally requested notification of all issues relating to the Navarro. The fact that neither NWP nor I received notice of this workshop speaks volumes concerning SWRCB's public process.

We intend to submit comments for this workshop, and expect them to be read publicly and given full consideration whether or not we are able to be present.

Sincerely,



Hillary Adams
Chairperson

c: Baggett
Baiocchi
Volker
Senator Chesbro
Assemblywoman Strom-Martin

HMS
~~VAT~~

NAVARRO WATERSHED PROTECTION ASSOCIATION

P. O. Box 1936 * Mendocino, CA. 95460

November 19, 2000

Mr. Harry Schueller, Chief
State Water Resources Control Board
Division of Water Rights
P. O. Box 2000
Sacramento, CA. 95812-2000

VIA FAX: (916)-657-1485 and
certified mail

Dear Mr. Schueller:

We sent a letter to you dated November 12, 2000 objecting to the fact that our organization was not notified of a workshop on process to be held in Sacramento on November 27th, the comments for which are due on November 20th. Although you sent a letter by FAX on November 17th to Hillary Adams apologizing for this omission in her own case, you did not give any explanation why our group was omitted from this notification, or respond to us directly.

The Navarro Watershed Protection Assn. (NWPAs) requested notification of all applications and actions pertaining to the Navarro Watershed on July 15, 1999 and have received such notifications up to this time. Therefore our group's name should be on the official list to which you refer in your letter to Hillary Adams dated November 17, 2000. Moreover, NWPAs wrote a letter to you dated April 17, another dated May 20, and a third dated May 30, 2000 concerning issues of process on the Navarro Watershed. We also addressed letters to Alana Gibbs, dated May 31, and to Ms. Humberstone and Mr. Stein concerning dated May 8, 2000, all of which concerned process. The letter to Ms. Humberstone was answered by Ms. Vasquez on May 17, 2000 (see enclosures). It seems clear to us, and should be clear to the State Water Resources Control Board, Division of Water Rights (SWRCB?DWR) that we are interested in the problems of process with regard to applications for water permits. We are astonished that our organization was not notified of this important workshop. The fact that we were not points clearly to problems within the process.

1. Workshops:

a) Workshops should be held at least once a year in the local areas affected. This would give the State Water Resources Control Board an opportunity to get out

into the field in order to see first hand what is going on. It would also allow greater participation by the public in such workshops. The California Coastal Commission holds its meetings in various places so that the public can attend and they can see the issues in the field. At present, only professionals paid for by agricultural interests, well financed environmental organizations, and government staff can afford to make multiple trips to Sacramento to be heard by the SWRCB.

b) tape recordings and minutes should be kept of all public workshops, and these should be made available to the public. Important decisions are made and directions given at such workshops by the SWRCB members. At present, there is no public record, not even minutes, of these meetings. Those who attend must rely on second-hand reports which vary with the telling. Since it is so difficult for the public to get to Sacramento for these workshops, the public should have access to what happens by both tape recordings and official minutes.

2. Notification:

Issues concerning the process of notification should be made clear to the general public by means of an instruction sheet that would accompany SWRCB/DWR responses to letters or protests. They should be advised that in order to continue to receive notification about applications they must request that their name on a notification list and advised how to do this. They should also be advised how to remove their name from such a list.

3. Water Rights Process:

This above mentioned instruction sheet should outline the steps in the process of water rights applications from the standpoint of the public. The general public is usually unaware of the process and of the conditions under which their protests might be automatically dropped, such as failure to attend a field investigation. We have determined from our experience that there are ten steps in this process: 1) Application; 2) Notice of Application to Interested Parties (this is apparently done without staff review of the application; see below) ; 3) Response by interested parties, including protests and letters sent to SWRCB/DWR; a copy of the protest must also be sent to the applicant; 4) applicant's written response to protestants (within 15 days; this step is frequently omitted by the applicant, although required by law); 5) Field Investigation (it is not clear what activates this process. Is it inaugurated by staff? Is it a matter of request by either the protestant or the applicant?); 6) Additional comments to field investigation, requested by protestants and allowed by staff; 7) CEQA documents, presently improperly handled by a Draft Initial Study which is usually included with a Draft Negative Declaration (see comments below), 8) response to these draft documents; 9) Issuance of Permit (presently misleading to the public since it appears that a permit has been actually

issued while in fact there is opportunity to respond by a petition for reconsideration
10) Acceptance or rejection of the petition. This last is seriously flawed from the point of view of public process since apparently the thirty day period in which it is possible to file litigation begins with the date of issuance of permit, not with the date of rejection of the petition for reconsideration. This means that the petitioner must file before he knows whether or not his petition has been accepted. Yet the administrative record is not exhausted unless he files the petition. The applicant should also be advised of these steps, since not all applicants rely on engineering firms or attorneys. They should also be advised that they cannot build their projects until all of the steps have been completed and that this might take some time.

4. Application:

a) We appreciate the procedure of listing the other protestants on the letter of acceptance for protests for any given application. However, the protests should be made readily available for public review. This could be done via the internet.

b) Applications on the Navarro watershed do not seem to be reviewed by staff before they are passed on to the public. In every other governmental agency with which we are familiar, applications are given staff review before being noticed to the public. Without such review, it is impossible to know the actual situation of the application. For example, many of the applications passing through the Navarro system now are for illegally built, on-stream reservoirs (130 illegally built reservoirs were identified on the Navarro system by DWR staff in 1997). However, these applications for illegally built reservoirs are often not distinguishable from applications for reservoirs that have not yet been built. This could be easily remedied by staff review. In at least one case (Oswald) there were legal reservoirs which related to illegally built reservoirs, but this fact was not revealed in the permit application. This is critical information that could easily be made available to the public by staff review. Such information should be required of the applicant. Also, the applicant should be required to state what other water resources are available, such as wells and underground drainage piping. The applicant should be required to state if the wells are in the underflow of the creeks and rivers.

c) The "thirty day" response time for protestants is often shortened by the notice to the public being mailed on Friday. Moreover, there have been instances of stamped notice dates being several days earlier than the actual mailing dates recorded on the postal mark. As much as a week can be cut off from the process in this way. Because California is a very large state, it often takes five days for mail to reach outlying areas such as ours. Therefore nearly two weeks of the thirty days can be taken up by the mailing process, leaving only two weeks for the public to respond. It should be made clear to the public that they can request a time extension (applicant's seem to be aware of this, but the public is not). Since

SWRCB/DWR does not presently make this clear to the public, if a response to an application arrives a day or so late, as happened with several of our applications this past year during a period when we were deluged with applications, if a request is made at that time to accept the response to the application, it should be accepted (see the rejection of our protest on Gaines, #30859, which was included with a number of others and postmarked Feb. 4, 2000. It was rejected in spite of our request to consider because it should have been postmarked Feb. 2).

d) On the Navarro system, we experienced an overloading of applications so that respondents were required to respond to as many as eight applications in a month (see our letters to Ms. Gibbs dated May 31 and Ms. Humberstone and Mr. Stein dated May 8, 2000 enclosed). This is an unfair practice in relation to the public and we registered a complaint concerning it. The applicant only has to deal with his own application. The public has to deal with as many applications as SWRCB/DWR wants to throw at them. The public should be given a month to respond to each application. On the Navarro this has been combined with two field investigations per month on two separate days, from spring through fall this year. The public should not be overburdened simply because the SWRCB/DWR has failed to do its job in the past and is now trying to catch up. There should certainly be no more than one new application to respond to per month.

e) Since our complaint concerning this situation on the Navarro, which was also made to our political representatives, the situation has eased somewhat. However, we wish to repeat the following information from our letter of May 30, 2000: "The SWRCB/DWR has neither noticed nor processed an application on the Navarro watershed for at least three years. DWR took an inordinate amount of time to publish a study which they said, in 1997, they had already completed, and which was used at that time to dismiss protests. It is only since the SWRCB issued a permit to Hahn (#29907), that DWR began to process and notice applications at an unprecedented rate. Some of these applications date as far back as 1990. Some are as recent as 1999." Applicants tend to blame protestants for delays in the permit process. We contend that the blame should be placed on the SWRCB/DWR. They have presented a methodology concerning water availability which has been rejected even by their own team of reviewers (Moyle and Kondolf) and which cannot be accepted by the public. They have also failed to consider cumulative effects under CEQA.

f) Applications on the Navarro watershed are not being taken in order. Laura Vasquez stated on the field investigation for Donnelly Creek Vineyards that this was because the other applicants "were not ready" for their field investigations. This does not, in fact, appear to be the case. We have noted that the clients of Wagner and Bonsignore seem to have been placed before a number of smaller, local

applicants. The following is from our letter of May 30th, 2000: "These applications are not being processed in the order in which they were submitted. The applications seem to have been ordered according to size and complexity, starting with the 6 acre feet off-stream reservoir originally submitted on February 14, 1991 by Hahn, # 29907; then Bennett/Cahn, # 29711, which was filed considerably prior to Hahn (April 4 of 1990) as can be immediately seen by its number; then Savoy # 29910 and 29911, filed March 4, 1991. Since Oswald failed to mention two other illegal reservoirs he had on his property, his application # 29810 (originally filed August 29, 1990 with one illegal reservoir) is now changed and another application added: #30792 filed October 19, 1998. A field investigation on these applications was held May 23, along with Onacrest (another Cahn application) # 30024 (filed Oct. 24, 1991 but not noticed until March 3, 2000) and 30474 (filed August 15, 1995; again not noticed until March 3, 2000)."

g) Of the 12 field investigations held this past year on the Navarro Watershed, all but three were represented by Wagner and Bonsignore. Applications which were processed but for which field investigations were not held this year are: Battinich/Spinardi (30828); Demuth (30794); Donovan Peters (30926); Marks (30761); Mathias (30348); Mitchell/Macedo (30789); Navarro Fairhills Ranch (30369 and 30870); Rose (30930); Savoy (30994) and Scharffenberger Cellars (now Pacific Echo (30861). Of these, only four had professional representatives: Mitchell/Macedo (Wagner and Bonsignore); Navarro Fairhills Ranch, and Scharffenberger/Pacific Echo(Napa Valley Vineyard Engineering) and Savoy (Kronick, Moskovitz, Tiedemann and Girard). It is possible that these four were not ready for field investigations, but we challenge that statement concerning the other seven applicants.

4. Field Investigations:

a) See comments above . It should not be required that a protestant must attend a field investigation in order to maintain their protest. Field investigations are often far away (45 minutes drive in our case, and many hours away for protestants such as the California Sportsfishing Protection Assn.). Previous commitments or ill health could keep a person from attending. There are frequently many reasons for protests which are not dependent upon the field investigation.

b) Investigations should include a formal period for presentation of comments, held in places in which the attendees can be seated, can clearly hear each other, and are not made uncomfortable by the surroundings (see our letter to

Schueller dated May 30, 3000). According to the division staff (Ms. Vasquez) they can decide how each field investigation is held. Therefore the public cannot know what to expect at each investigation in a consistent fashion. We have been denied the right to tape comments made by participants or to photograph the projects. It is the opinion of our attorney that these are public meetings and that both recording and photographs should be allowed. The staff of DWR has refused our requests to record comments and has allowed the applicant to determine whether or not we may photograph. Clients of Wagner and Bonsignore often refuse this. Most others allow it. Although they have offered copies of staff photographs, it is almost impossible to identify which photographs to order without going to Sacramento. Both taping and photographs should be allowed in these public meetings.

6. Permits and CEQA:

a) Permits are presently being allowed to pass through the Navarro watershed without following CEQA or requiring an EIR, by the process of presenting Initial Studies accompanied by Draft Negative Declarations. This is inexcusable since it neglects cumulative effects as defined under CEQA. Cumulative effects are essential in determining water availability. This must stop.

b) Numerous permits are being processed under "minor" withdrawals. A number of applicants on the Navarro have a series of these small withdrawals which eventually add up to large withdrawal (for example: Mendocino Hills Vineyards: 29868 = 113 afa; 29869 = 140 afa; 299870 = 94 afa).

7. Compliance and Enforcement:

a) Is there any? We have not seen much evidence of it on the Navarro watershed. For example, at the urging of the North Greenwood Community Assn. through their political representatives and others, DWR conducted an aerial survey in 1997 using Mendocino County aerial photographs. They identified 130 illegally constructed reservoirs on the Navarro system, most of them on-stream. Of these, DWR fined only one (Phil Wasson). This was because Mr. Wasson refused to get in line for a permit. The other 130 reservoir owners, who had been taking the State's water illegally for years, have not been fined. This was ostensibly because they might not have known they needed a permit. However, most of them did know that they needed a permit. It is difficult not to know that in Anderson Valley since there has been a public outcry about excessive water abstraction there since 1991. The Anderson Valley Advertiser, a local paper, has also made the issue very clear. Yet they have been allowed to continue to use the State's water just as though they had applied for and received permits properly. This is especially blatant in the case

of Jenks (No.) who stated that he was told by DWR that it could be about a year before he would get his permit, and since he did not get it by that time he went ahead and built his reservoir anyway.

b) Duckhorn (previously Obester: lic. 2920C, appl . 21256C) has been out of compliance for two years concerning the use of water from Indian Creek. In addition, they have been trucking water from a reservoir filled in part by water from Indian Creek to another vineyard six miles up Highway 128 in an entirely different watershed. DWR has written several letters over the course of two years to this applicant without result. Meanwhile, they have allowed him to continue what appear to be illegal practices and have never fined him. It would appear that Duckhorn will be abandoning his water right on Indian Creek, not because of any action by DWR, but because he is being sued by his co-licensee, John Dash, for improper actions. Duckhorn now claims they are filling their large reservoir from a well which is on the bluff directly above Anderson Creek, one of the most heavily impacted creeks on the Navarro watershed. We have requested through the complaint process that DWR test this well for summer flow, in order to determine whether it is producing the amount of water which Duckhorn claims, enough to trucking to two other new vineyards without a water supply, and also to determine if their well is in the underflow of Anderson Creek. DWR has so far refused to do this.

c) Compliance and enforcement are so lax on the Navarro watershed that a number of new reservoirs have been built since 1997 without permits, many of them within the past year. Some vineyard owners have apparently found a way around the permitting process by placing their wells very close to the rivers and creeks, in what appear to us to be the underflow, and by recontouring the land and placing underground pipes not only under the vineyards but in every swale that could direct water into their reservoirs. Small springs are often captured and redirected in the same way, so that the evidence of their existence is erased. Other reservoirs are simply capturing the water directly without permit. This bold action appears to be due to the fact that by now everyone in Anderson Valley knows that no fines will be imposed, no matter how egregious the violation. We consider this attitude on the part of DWR a misuse of the public trust.

8. Licensing:

Old Licenses and permits on the Navarro watershed should be re-opened in the light of new information relating to fisheries and the survival of endangered species. These should be reconsidered in light of the need to determine water availability in relation to cumulative effects (Public Resources Code Division 10,

Section 1000 b and CEQA regulations). All on-stream reservoirs, which are presently blocking fish passage, should be moved off-stream.

9. Petition for Change:

This process seems to us improper in its present form and open to misuse. An applicant can pass through the permitting process and receive a permit for a specific withdrawal and season, then turn around and petition for a longer season and a larger withdrawal, or a longer time to develop their "beneficial use." This allows them to hold a permit for many years without fully developing their crop, during which time they may be allowed to capture water in on-stream reservoirs (thus potentially harming fish). They are not using the water, but they have kept the permit which gives them a valuable commodity (water permit) for resale since the permit runs with the land (e.g., McGuinness, # 29594, Permit 20563 extension to 10 years; property now sold). The time allowed for development of beneficial uses has apparently been recently changed from five years to ten, in spite of the Water Code law which insists that there should be due diligence (Water Code Chapter 6, Article 4, Sec. 1395).

10. Other issues:

a) DWR should be able to clearly address and control withdrawal from the underflow of streams, since taking from the underflow is potentially more dangerous to fish than taking from surface flow. Water can be removed even when none is flowing on the surface, and the water table drawn down significantly.

b) DWR should have control over subsurface water drainage when it is manipulated to refill reservoirs as is presently happening on the Navarro Watershed (Cakebread, V. Sattui, Duckhorn). This change from the natural drainage is potentially harmful to fisheries since it interrupts the natural system that has been developed over thousands of years in any given watershed. Like the underflow-well, it is potentially very dangerous since it can capture nearly all the natural water on a given property and redirect it away from the streams.

Sincerely,



Hillary Adams
Chairperson

STATE WATER RESOURCES
CONTROL BOARD

NOV 22 PM 1:45

DEPT. OF WATER RIGHTS
SACRAMENTO

☒ certified mail